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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

THOMAS KENNEDY HELM IV, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendant. )

No. CV 10-4634 RS

**JOINT CASE MANAGEMENT  
STATEMENT AND ~~PROPOSED~~  
ORDER**

Date: February 10, 2011  
Time: 10:00 a.m.

1           1. **Jurisdiction and Service:** The parties are not currently aware of any issues  
2 concerning personal jurisdiction, venue, or service. Plaintiff, Thomas Kennedy Helm IV,  
3 (“Plaintiff”) brought this action under the Freedom of Information Act, 5 U.S.C. § 552. The  
4 Federal Defendant seeks an extension of time to file a responsive pleading and or answer through  
5 February 18, 2011; the Plaintiff does not object to this request.

6           2. **Facts:** On or about, December 18, 2009, Plaintiff, submitted a request to the  
7 defendant, United States Department of Labor - Office of Labor Management Standards  
8 (“OLMS”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 et seq (“FOIA”) seeking  
9 the production of records pertaining to the trusteeship imposed by the Service Employees  
10 International Union’s (SEIU) on or about January 27, 2009 over the California based United  
11 Healthcare Workers-West (UHW-W). Plaintiff, a law student, requested the records in order to  
12 prepare a law review article. Plaintiff’s request sought six categories of documents.

13 **Plaintiff’s Factual Assertions**

14           The Defendant OLMS initially acknowledged Plaintiff’s request on March 8, 2010.  
15 Between March 8, 2010 and March 24, 2010, the parties engaged in communication regarding  
16 the scope and timeliness of the production of documents responsive to Plaintiff’s request.  
17 Defendant OLMS indicated the first batch of documents would be released to Plaintiff by June  
18 15, 2010.

19           On July 23, 2010, Plaintiff’s counsel wrote the OLMS FOIA Coordinator explaining  
20 Plaintiff had yet to receive any documents and repeating Plaintiff’s request for records. Between  
21 August 3, 2010 and August 26, 2010, Plaintiff’s counsel communicated with Defendant OLMS  
22 via telephone and email regarding the outstanding request. On October 14, 2010, contending he  
23 had not received the requested records, Plaintiff filed this action.

24           On December 3, 2010, Defendant OLMS provided an initial response to Plaintiff’s FOIA  
25 request informing Plaintiff it had identified 5,238 responsive documents, including  
26 approximately 700 pages of duplicates. It provided Plaintiff with 487 pages of documents  
27 responsive to his request. It explained 3,751 pages of the responsive documents were subject to  
28 Exemption 4 of FOIA, which required OLMS to notify the union prior to the release of such

1 materials and engage in a waiting period before production. On January 13, 2011, Defendant  
2 OLMS sent a second response to Plaintiff that included 3,751 pages of documents responsive to  
3 Plaintiff's request.

4 On February 1, 2010, Plaintiff received a third response from OLMS that included 279  
5 pages within the scope of Plaintiff's FOIA request with redactions made pursuant to FOIA  
6 Exemptions 2, 5, 6, 7(C), and 7(D). Plaintiff is currently reviewing the latest disclosures from  
7 Defendant OLMS. He has asked for further information from Defendant OLMS regarding other  
8 records specifically requested in his original FOIA request that he contends are missing from the  
9 disclosed documents.

#### 10 **Defendant's Factual Assertions**

11 The Defendant OLMS initially acknowledged Plaintiff's request on March 8, 2010.  
12 Between March 8, 2010 and August 26, 2010, the parties engaged in communication regarding  
13 the scope and timeliness of the production of documents responsive to Plaintiff's request. This  
14 action arose because it is Plaintiff's position that the Defendant did not produce documents in a  
15 timely manner. The Defendant OLMS has produced approximately 4200 pages of documents.  
16 Approximately, 3700 pages of documents requested were subject to Exemption 4 of FOIA,  
17 which required OLMS to notify the union prior to the release of such materials and engage in a  
18 waiting period before production. Defendant OLMS has nearly completed its production of  
19 documents responsive to Plaintiff's request. The Defendant has not withheld any documents, but  
20 has redacted material pursuant to FOIA.

21 3. **Legal Issues:** OLMS has disclosed most of the records requested by Plaintiff in his  
22 December 18, 2009 FOIA request. The parties continue to communicate regarding the remainder  
23 of undisclosed records and Plaintiff's concerns about the withholding of additional documents.  
24 The parties believe they will resolve these outstanding questions and that any legal issues soon  
25 will be moot.

26 4. **Motions:** The parties do not believe that any motions will be necessary to resolve the  
27 merits of the case. Plaintiff will bring a motion for attorneys' fees and expenses, if the parties are  
28 unable to resolve plaintiff's claim for fees and expenses.

1           **5. Amendment of Pleadings:** The Plaintiff does not presently intend to amend the  
2 pleadings. The Federal Defendant does not anticipate any amendments.

3           **6. Evidence Preservation:** Because the requested records are being produced, defendant  
4 does not believe that any evidence preservation is necessary. Plaintiff believes that defendant is  
5 obligated to preserve evidence pertaining to the December 18, 2009 Request until this case is  
6 finally resolved.

7           **7. Disclosures:** Because of the nature of this case, and because defendant has produced or  
8 will produce the records requested by plaintiff, defendant believes that initial disclosures  
9 pursuant to Rule 26(a) are unnecessary in this case. The parties agree to postpone the due date  
10 for any initial disclosures through March 18, 2011.

11           **8. Discovery:** Defendant contends that discovery is not necessary or appropriate in this  
12 FOIA case. Plaintiff agrees that the discovery process is generally not utilized in FOIA cases  
13 such as this, but it reserves the right to seek discovery under one of the judicially recognized  
14 exceptions to this doctrine if circumstances require.

15           **9. Class Actions:** Not applicable.

16           **10. Related Cases:** None.

17           **11. Relief:** Plaintiff seeks an order requiring defendant to provide plaintiff with all of the  
18 information sought in the action. However, both parties anticipate that this request will become  
19 moot due to defendant's recent and upcoming disclosures. Plaintiff will seek attorney's fees and  
20 expenses after the case has been resolved.

21           **12. Settlement and ADR:** Because the parties believe that the response to the underlying  
22 FOIA request will soon be completed, the parties request to be exempted from formal ADR at  
23 this time.

24           **13. Consent to Magistrate Judge for All Purposes:** The parties have not consented to  
25 assignment of this case to a United States Magistrate Judge.

26           **14. Other References:** None.

27           **15. Narrowing of Issues:** None.

28           **16. Expedited Schedule:** The parties believe that this case will soon be resolved.

1 However, if Court resolution is necessary, this case can be solved through motions for summary  
2 judgment.

3 17. **Scheduling:** The parties suggest that the Court continue the case management  
4 conference until March 10, 2011. If the case has not been resolved and dismissed by that time,  
5 the parties and the Court can discuss any remaining action that should be taken. A stipulation  
6 and proposed order seeking this continuance will be filed with this case management conference  
7 statement.

8 18. **Trial:** If not promptly settled, this case can be decided on motion; no trial will be  
9 necessary.

10 19. **Disclosure of Non-party Interested Entities or Persons:** The disclosure  
11 requirement in Civil L. R. 3-16 does not apply to governmental entities.

12 20. **Other Matters:** Such other matters as may facilitate the just, speedy and  
13 inexpensive disposition of this matter: The parties do not believe that there are any other matters  
14 relevant to the just, speedy and inexpensive disposition of this matter ripe for the Court's  
15 consideration.

16  
17 DATED: February 2, 2011

Respectfully submitted,

18 MELINDA HAAG  
19 United States Attorney  
/s/ Melissa Sladden

20 \_\_\_\_\_  
21 MELISSA BROWN SLADDEN  
Assistant United States Attorney

22 DATED: February 2, 2011

23 MOIRA DUVERNAY  
24 Law Offices of Amitai Schwartz  
/s/ Moira Duvernay

25 \_\_\_\_\_  
26 MOIRA DUVERNAY  
27 Attorney for the Plaintiff  
28

**[PROPOSED] ORDER**

Pursuant to the request of the parties, the Federal Defendant shall have until February 18, 2011 to file and serve a responsive pleading and or answer. The initial case management conference in this matter is continued from February 10, 2011 at 10:00 a.m to March 10, 2011 at 10:00 a.m.

IT IS SO ORDERED

Dated: 2/4/11



RICHARD SEEBORG  
United States District Court Judge